

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
Proposing a Market Structure and Rules for the  
Northern California Natural Gas Industry for the  
Period Beginning January 1, 2003 as Required by  
Commission Decision 01-09-016. (U 39 G)

Application 01-10-011  
(Filed October 8, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REGARDING THE MOTIONS TO STRIKE AND TO  
MODIFY THE PROCEDURAL SCHEDULE**

**Summary**

On January 31, 2003, the Northern California Generation Coalition (NCGC) filed a motion to modify the procedural schedule in the above-captioned proceeding, and a motion to strike the cost of capital testimony contained in Pacific Gas and Electric Company's (PG&E) prepared testimony, which was served on January 13, 2003. Interested parties were provided with the opportunity to respond to the motions.

Today's ruling grants NCGC's motion to strike PG&E's cost of capital testimony from this proceeding, and denies NCGC's motion to modify the current procedural schedule.

**Background**

NCGC's motion to strike requests that Chapter 11 of PG&E's prepared testimony regarding its cost of capital proposal be stricken from this proceeding. NCGC contends that the cost of capital issue for PG&E's gas transmission and storage plant should be addressed in the 2004 generic cost of capital proceeding.

NCGC asserts that PG&E has not demonstrated why its rate of return for its gas transmission and storage should be addressed in this proceeding rather than in the annual cost of capital proceeding. NCGC also points out that PG&E's bankruptcy case may result in a change to PG&E's capital structure, which could affect its rates of return. NCGC contends that the impact of the bankruptcy case should be considered in the annual cost of capital proceeding, where all of these issues are supposed to be addressed.

NCGC's procedural schedule motion seeks to modify the dates for submission of the prepared testimony and the hearing schedule. Due to the expanded scope of the issues covered in PG&E's prepared testimony, NCGC requests that instead of all interested parties submitting their prepared testimony on February 28, 2003, NCGC requests that the Office of Ratepayer Advocates (ORA) submit its prepared testimony first, and that the other interested parties be allowed submit their prepared testimony on March 24, 2003. NCGC also requests that the rebuttal testimony of all parties be submitted on April 10, 2003, and that the evidentiary hearings commence later in April.

The following parties filed responses to one or both of the motions: PG&E; the California Cogeneration Council, Calpine Corporation, and Mirant Americas, Inc. (collectively, CCC/Calpine/Mirant); the Canadian Association of Petroleum Producers (CAPP), the Department of General Services (DGS); Duke Energy North America and Duke Energy Trading and Marketing (Duke Energy); ORA; and The Utility Reform Network (TURN).

### **Motion to Strike**

PG&E opposes NCGC's motion to strike PG&E's cost of capital testimony from this proceeding. PG&E contends that its cost of capital proposals reflect the risk for its gas transmission and storage services under the gas accord regulatory

framework, which PG&E asserts “are significantly different from those used in the generic, annual cost of capital proceeding.” (PG&E Response, p. 4.) PG&E argues that since the cost of capital is a function of the specific regulatory framework, the cost of capital should be considered in the same proceeding which addresses the regulatory framework.

PG&E also asserts that if the cost of capital issue is considered in the annual generic proceeding, rather than in this proceeding, that this will hinder the resolution of this proceeding. PG&E contends that since the components of the cost of capital analysis are an essential input to the Gas Accord rates, unless the cost of capital is established, it will be impossible to set actual and final rates in this proceeding. PG&E also states that based on the current trend of the annual cost of capital proceedings, it is unclear when the cost of capital for gas transportation and storage services will be determined.

CCC/Calpine/Mirant, CAPP, DGS, ORA, and TURN all support NCGC’s motion to strike PG&E’s cost of capital testimony from consideration in this proceeding. These parties believe that PG&E’s cost of capital for its gas transmission and storage facilities should be addressed in the generic cost of capital proceeding. They do not believe that PG&E’s gas transmission and storage facilities are so different from the gas assets being considered in the generic cost of capital proceeding, that the cost of capital issues should be considered in this proceeding.

CAPP suggests that if the generic cost of capital case is not decided in time to be incorporated into the rates for this proceeding, that the Commission should

use PG&E's currently-adopted capital structure and cost of capital as a placeholder for this proceeding.<sup>1</sup>

The Commission's rate case plan is set forth in Decision (D.) 89-01-040 [30 CPUC2d 576]. In that decision, the Commission established a generic annual cost of capital proceeding for the energy utilities. The most recent cost of capital proceedings were addressed in D.02-11-027, which established PG&E's cost of capital for 2003 for its electric and gas operations. Among the factors that the Commission considered in that proceeding were financial, business, and regulatory risks.

Since the Commission has established the annual cost of capital proceeding to examine the cost of capital for each energy utilities' gas and electric operations, there is no reason to consider PG&E's cost of capital proposal in this proceeding rather than in the annual cost of capital proceeding. If the cost of capital proceeding for test year 2004 is not completed in time to be inputted into the rates that are being considered in this proceeding, the parties can use the cost of capital established in D.02-11-027 as a placeholder until a decision on the cost of capital for test year 2004 is rendered.

Accordingly, the motion of NCGC to strike the cost of capital testimony, found in Chapter 11 of PG&E's January 13, 2003 prepared testimony, from consideration in this proceeding should be granted.

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<sup>1</sup> TURN states that the return on rate base of 9.24% for PG&E's gas operations, which was adopted in D.02-11-027, should form the basis for rates until there is a decision in the next cost of capital proceeding.

### **Motion to Modify Procedural Schedule**

PG&E is opposed to NCGC's motion to modify the current procedural schedule. PG&E points out that it was NCGC who proposed the current schedule format of having PG&E submitting its testimony first, followed by the testimony of all of the other interested parties. PG&E also contends that prior to its motion, NCGC never raised a concern that ORA should submit its testimony before the other parties. PG&E also states that if NCGC's motion is granted, that this will further delay the proceeding and is likely to result in conflicts of time and personnel for PG&E.

CCC/Calpine/Mirant, DGS, Duke Energy, and TURN support NCGC's motion to modify the procedural schedule. The parties in favor of the extension state that in proceedings involving cost of service, cost allocation and rate design issues, ORA typically serves its testimony first followed by the other intervenors' testimony. Such a schedule will allow ORA to identify the issues and develop recommendations, and allow other parties more time to adequately review PG&E's submission.

Although CCC/Calpine/Mirant and CAPP support NCGC's motion to modify the schedule, they urge that any revised schedule ensure that hearings are completed in April 2003. They assert that such a schedule will allow a decision to be issued in time for an open season to be held, and to eliminate the commercial uncertainty.

There is certainly a benefit to having ORA submit its testimony first, followed by the testimony of other parties. However, the timing of the adoption of a decision and the implementation activities that will follow, are important considerations as well. If a change in the hearing dates were extended, due to scheduling constraints hearings would not be completed until sometime in early

May 2003, with closing briefs due sometime in June. Such a schedule would not result in the adoption of a Commission decision until late October 2003, at the earliest. This could interfere with the holding of an open season and the negotiation of other commercial arrangements for gas transmission beginning on January 1, 2004.

Weighing all of the competing interests, NCGC's motion to modify the existing procedural schedule should be denied. Thus, the schedule adopted in the December 9, 2002 ruling of the undersigned shall remain in effect. That is, all other parties responding to PG&E's prepared testimony shall serve their prepared testimony on February 28, 2003, all rebuttal testimony shall be served on March 24, 2003, and evidentiary hearings will begin on Tuesday, April 1, 2003, at 10:00 a.m.

**IT IS RULED** that:

1. The Northern California Generation Coalition's (NCGC) January 31, 2003 motion to strike the cost of capital testimony, contained in Pacific Gas and Electric Company's (PG&E) January 13, 2003 prepared testimony, from this proceeding is granted.
2. NCGC's January 31, 2003 motion to modify the procedural schedule in this proceeding is denied.
3. The procedural schedule adopted in the Administrative Law Judge's ruling of December 9, 2002 shall remain in effect.

Dated February 14, 2003, at San Francisco, California.

/s/ JOHN S. WONG

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John S. Wong  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding the Motions to Strike and to Modify the Procedural Schedule on all parties of record in this proceeding or their attorneys of record.

Dated February 14, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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A.01-10-011 JSW/sid